

**MINUTES**  
**OF THE**  
**ENVIRONMENTAL PROTECTION COMMISSION**  
**MEETING**

**JANUARY 22, 2003**

**INGRAM OFFICE BUILDING**  
**7900 HICKMAN ROAD**  
**CLIVE, IOWA**

## TABLE OF CONTENTS

Call to Order .....	1
Members Present .....	1
Members Absent .....	1
Adoption of Agenda.....	1
APPROVED AS AMENDED .....	1
Director's REMARKS .....	1
Demand for Hearing - Fayette County – Fremont Ridge, L.C.....	2
APPROVED AS AMENDED .....	43
Adjournment.....	49

## MEETING MINUTES

### CALL TO ORDER

The meeting of the Environmental Protection Commission was called to order by Chairperson Murphy at 10:00 a.m. on Wednesday 22, 2003, in the Ingram Office Building, Urbandale, Iowa.

### MEMBERS PRESENT

Lisa Davis Cook  
Kathryn Murphy, Chair  
Jerry Peckumn  
Gary Priebe, Vice Chair  
Kelly Tobin  
Terrance Townsend  
Rita Venner, Secretary

### MEMBERS ABSENT

Lori Glanzman  
Darrell Hanson

### ADOPTION OF AGENDA

The following adjustments were made to the agenda:

- Delete: Item 2 – minutes approved at the meeting on previous day, January 21, 2003
- Delete: Item 5 - A demand for hearing, Dickinson County, postponed

*Motion to approved amended agenda was made by Townsend, Terrance, Venner, Rita Seconded the motion.. Motion carries.*

**APPROVED AS AMENDED**

### DIRECTOR'S REMARKS

Kathryn Murphy introduced our Deputy Director, Liz Christiansen. Welcome Liz.

#### **Christiansen, Liz**

Good morning. The director could not be here today. He is currently making a presentation to the House Natural Resources Committee regarding deer population and the threat of chronic wasting disease in Iowa. He did not have any particular guidance to provide to the commission regarding this hearing although he did wish me to share with the audience that the Dickinson County hearing that was originally scheduled for this afternoon is postponed. It seems that all parties are coming to the table and discussing the resolution. That's all.

**DEMAND FOR HEARING - FAYETTE COUNTY    FREMONT RIDGE, L.C.**

On December 18, 2002, the department issued a draft construction permit to Fremont Ridge, L.C., indicating a preliminary decision to approve a new swine finishing confinement feeding operation near Westgate, Iowa. On December 30, 2002, the department received a demand for hearing from Fayette County. Fayette County and Fremont Ridge, L.C. have requested the opportunity to make oral statements. Pertinent documents relating to the demand and the department's and/or Fremont Ridge, L.C. response to it will be provided to the Commission.

The Commission is requested to review this matter and render a final decision by January 22, 2002, which is within 35 days from the date the department received the Board's demand for hearing.

A copy of the documents received from Fayette County and Fremont Ridge, L.C. are available for review by contacting Carol Arpy on the 4<sup>th</sup> floor of the Wallace Building.

Wayne Gieselman  
Administrator  
Environmental Service Division

January 2, 2003

**Gieselman, Wayne**

It seems that a lot of these people behind me have some relationship. My brother lives in Fayette County and most of them seem to know him. What we have today is a proposed 7,200 head confinement swine facility near the town of Westgate. Reza Khosravi will be doing the presentation for the commission here today, to talk about what we looked at, what our review entailed, and how this fits into the rules and regs in the laws of the State of Iowa. I have the letter and the dates here, but I believe the application was received sometime in August. I have been to several public meetings in Fayette County. Robin Pruisner I know attended one of those meetings at least for the Department. The final permit or draft permit was issued in December and the county filed a timely appeal to that particular permit. Just so that everybody here is kind of on the same wave length and this is as much for the people behind me as the people in front of me, the way the commission is going to handle this hearing is to allow a half hour for a presentation by the staff, and a half hour for the presentation by the appellate, in this case Fayette County, and a half hour for the presentation by anyone else who is interested in this case so we are going to stick pretty closely I think, Chairperson Murphy, to that kind of a schedule. We have asked the commissioners to try to refrain from questioning as much as possible until after the half hour is over. We want to give everybody as much of an opportunity to talk as we can. I think, having said all that, I think that's a fair introduction. We'll probably go with the staff first here, Reza Khosravi is our acting supervisor of animal feeding. Dr. Khosravi will be giving our presentation and we have some folks here from our floodplains section and other sections here that might be able to answer questions that folks might raise as the hearing progresses so I think with that introduction I will just turn it over to Reza and we will start on the process.

**Khosravi, Reza**

I was planning to have a power point so I could show you the slides, but could not get it. The project we received: Fremont Ridge, L. C. Fayette County. We received the application on August 30, 2002, that's for a new hog confinement. It's below engineering threshold requirements, doesn't need P.E. or P.E. not required also no engineering plans or specifications are required so we issued the draft permit on December 18, 2002 and demands for a hearing from Fayette County came in on January 2, 2003. Required for construction permits when they are below engineering threshold, that is below 3,091 units. We have two thresholds. One is 3,000; if they are above that they need engineers. One is 1,\_\_\_ units and they need a construction permit; below that they don't need a construction permit. So required for construction permits below engineering threshold is compliance with minimum concrete standards, comply with separation distances, pay fees, have an approved MMP, and obtain 100 points on interim matrix so they have to meet all those requirements to be considered for that permit.

Proposed project: a description of it is for two new wean-to-finish barns. Each barn is 300' X 100' and under each building there would be a deep pit 8' deep and in each barn they are going to keep 3,600 head of finishers; total animal capacity, 7,200 head. That would be about 2,880 animal unit. So because they are 2,880 animal unit they need a construction permit. They are above 1,900 units. After we issued the permit, Fayette County raised some questions as to why we had issued and they had some concerns. The concerns I have categorized here is negative effects on the environment, health issues, and quality of life. Fayette County asked that proposed facilities in the floodplain area and they also have a concern about drilling new wells and how it affects their water supply and also drawdown of the groundwater table.

**Khosravi, Reza**

Powerpoint presentation:

It is two new wean-to-finish barns, total animal capacity 7,200 head finishers, 2,880 annual units. As I mentioned, issues raised by Fayette County was negative effects of this project on the environment, health issues like quality of life, proposed facilities in the floodplain area, concern about drilling new wells that will affect the water supply of Westgate, and also drawdown of groundwater table.

Other issues they are concerned about are air pollution, odors, flies, dust, and nuisance, surface and ground water pollution. I put under infrastructure, cleanup costs, damage to roads and bridges, local economy, and decreased property values. Also, there is a soil Floyd Series 198B that Fayette County says it's wet and low strength.

When we review a project our engineers make sure that the applicant is meeting all of the requirements. They make sure that they meet the minimum concrete standard requirement, drainage tile certification, make sure that fees are paid, a site survey is done by our field office, and check separation distances. Also DNR geology will help us to look at the MMP fields, whether there is over application or not or in this case we asked them to look at the water that digging wells and all of those things that I will discuss later. Our manure management plan reviewer reviews the plans and he and DNR Parks and Preservers looks at whether the sight has endangered a species or exposed nearby parks sensitive areas. We asked our floodplain section to help us find out whether the site is in a floodplain as claimed by Fayette County and that ground water section is our geology service section that has been helping us too.

Our DNR response to county issues is in terms of infrastructure, flies, dust, and nuisance. DNR has no authority on these issues so that's our response to those topics brought up by Fayette County. On air quality, DNR cannot enforce air quality standards prior to December 1, 2004. That's quoting Senate File 2293.

On cleanup costs, usually the applicant or the responsible party is required to perform or pay for cleanup costs if something happens, so the party applicant is responsible. On negative impacts on surface and groundwater pollution I'm going to show you the next slide and in order to discuss it for you and why I think there is no negative impacts. One is that appropriate manure storage, the other one is proper manure management. So this is the field that I am showing you, the manure management plan. There are eleven fields in Fayette County from A to K and then there are two fields on Bremer County; fields L and M. M & P has been approved for all these fields here and there will be injection of the manure, that means less odor and less probability of spills. All the fields are okay except for field A that is kind of hilly area higher land, we call that HEL, so it's about 140 acres. I have talked to applicant. They need 480 acres of land to apply their manure, but they have 1,058 acres so I have talked to applicant. If it comes to the point of asking to ignore that part A, he will do that for us. The rest are okay and really since there is injection there is no separation distances required for all of those things other than there is some fields close to Volga River and also field M close to Little Wapsipinicon River. So in terms of availability of land, there is enough land available and there will be injection. In terms of storage capacity, they will meet all the requirements of concrete standards that they have enough capacity to store the manure. So in our judgement there wouldn't be any negative effects of these projects as we plan and as the applicant has released all the material and documentation to the environmental people of Fayette County.

Two major issues that we worked on and I think these two major issues are the biggest issues that Fayette County brought out is that the proposed facility is in a floodplain area and also they have concern that if this project goes on and they start building and they think that they will negatively affect the water supply of Westgate. I will give you background information. This is the City of Westgate, Main & Cass Streets, and this is the well of the City of Westgate over there, #5. If you look at the distance, the distance between this city well and the proposed well the distance is about 7,000 feet between those two wells. I have selected some other wells in that area so I will discuss why I have selected those later on. Let me first address the issue of floodplain that is that area there. As you see there is Unicorn Road over there. First of all that site has alluvial soil and many of these alluvial soil is a red flag so when we see the red flag of alluvial soil we ask our floodplain section to study those whether that area is in floodplain or not and the answer that came to me was that the flood hazard laundry maps available for Fayette County, these maps do not provide elevation for 100 year flood, but they provide approximate width of the 100 year flood and by looking at those maps and the flood map and this information we have, they decide that they found out this area is not in floodplain. It's about 240 feet to an unnamed creek that joins Stoe Creek, and then Stoe Creek is about 15,000 feet from Little Wapsipinicon River. That is a major river, so to be in a floodplain you should be on a major water source, but in this case this is not, this is about 240 feet from an unknown creek that ends up to Stoe Creek, that ends up to Little Wapsi, so this is about 140 feet outside the floodplain area. But out of our concern for our Fayette County visitors, we ask the applicant to show us the

grading and elevations. As you see the lower elevation on the site would be 1,055 and the elevation on the bridge is 1,058 and Fayette County people claim that that site, that bridge, was under water in 1998 or 1966. In the last 40 years there have been flood in that area so that bridge is 158 and the lower point of that site is 155 and we asked the applicant to put their ponds about 168, even three feet higher than the top of the bridge. So if something happens there wouldn't be any mix-up of the water or the manure stored in that area. So that's what we did and that's what the applicant accepted to do and that's the plan that we'll go with if it's approved to be built. The pump house will be 1,068. That would be three feet higher than the elevation of the bridge so for that reason and with the help of the floodplain section we determined that this site is not in the floodplain area.

The other concern was that the capacity of water or the drawdown effects of this well on city well. For that reason I decided to talk to Schaller (?) Company, the contractor that is going to dig the well in that area and that company has done some work in Fayette County before. They dug, I think it was Randy Fortune's well, well #2. It was a deep well and at the same time they monitored the other wells that I'm showing you, wells #1, #4, and #5, Westgate well. So when they dug that and when they monitored the standing water, there was no adverse effects of digging that well to city well to Westgate city so the aquifer remains stable, there was no decrease in the elevation of water in those wells monitored and also that well #2 that was Randy Fortune's well, for a period of 22 hours giving out 300 gallons per minute, just went down seven or eight feet, the drawback, and then that shows that really the area is really generous in water and also prolific and the conclusion was that the city well is in the Aquifer and the well that they are going to dig in that site it would be \_ Silurian and talked to our geologist, Paul Van Dorpe on that and this is his conclusion on the well: he says, "The potential well location in section 15," that is that section that the site is, "would utilize the Silurian Aquifer, the desired use of 20 gallon per minute," that's the use that they are going to use it, they are going to use about 15,000 or 16,000 gallons per day, that is about 11 gallons per minute, so then the desired use of 20 gallon per minute appears to be quite reasonable for this aquifer in this location based on nearby wells as well as from the water atlas; however, it is always wise to conduct a palm test to determine long-term sustainability and that's what their contract is going to do when they start doing the monitoring of other wells to see how it works. Compared to Randy Fortune's well that was 300 gallons per minute, this is only 11 gallon per minute and that's another factor that we have to consider. That's about 3.6% of the capacity of that well that was back in 1988 I believe and we didn't have any adverse effects on the city well of Westgate so that's my discussion on those two major issues; it's not in floodplain and also the proposed well will not adversely affect the city well also.

Then Fayette County says that our soils is not suited for this type of construction, they are wet and low in strength. My response would be that the proposed confinement will be concrete, soil is not part of the construction, the wet soils and also we will ask the contractor to install drain tiles to divert ground water from the area so there wouldn't be any problem with that.

I just wanted to update you, to talk about more floodplain issues. 100 year floodplain when the construction cannot be built or is prohibited to be built when it is adjacent to a major water source in the 100 year flood and that means that at least a 1% chance that the land will be inundated in any one year. So that would be calculated by, adopted by our rules and also Senate

File 2293 deals with floodplain restrictions, two sections of that section 45 and section 32. Section 45 prohibits construction of structures in 100 year floodplain each designated by rules meaning that the DNR has their money and the staff to go ahead and designate that that would be a long-term assignment to get that done, so then the conditions in section 32 prohibition applies to 100 year floodplains of major water sources like here in this project major water source would be Little Wapsipinicon, that is about 15,000 feet from Stoe Creek or from that site.

Floodplain continued: Our floodplain section discussed this in front of you commissioners in December I believe and you did not approve the notice of entrance. So I found out that we changed that, but probably Karen couldn't put the latest version in. Yeah, it was discussed and EPC approved the notice of entrance to do the case-by-case study because the rationale behind it was if we want to wait to get everything designated it will be at least another 10-12 years, \$10,000 - \$20,000 per stream, that would be a major cost. So we decided to go case by case and case by case meant uses alluvial as we need. We looked at the site, it was alluvial, so we said this case should be a study. Alluvial soil is an indicator or potential indicator.

In my conclusion DNR has no authority to regulate some issues raised by Fayette County and those are ones like dust, or flies, or those things, but again out of our concern for Fayette County residents I have asked the applicant to give us plans on how to prevent dust and also control flies and he has agreed to do that because this close to the town, it's about 7,000 feet or 1.5 mile from the town. He has agreed to do that and also DNR concluded that the proposed site is not in the floodplain as I discussed for you and also Fremont Ridge has met all the rule requirements in 567 IAC Chapter 65, and facility will have adequate manure storage so that the manure can be removed and injected as we discussed, to avoid manned application of manure if soils are wet, saturated, frozen, or snow covered. Do not do it before or right after rain. Also use manure analysis to adjust N rates, inject manure to reduce the chance of run off and the amount of odor. Desired yield appears reasonable for this aquifer in this section or location based on nearby wells and water atlas. That's the conclusion of our geology service. I'm going to end it with Fremont Ridge met the legal criteria and a draft permit was issued. The people you see there is Duane Brown, he's our manure management reviewer and also I thought you might meet Sara Smith who has been here all the time presenting to you. She's not here today, so the picture is there.

Any questions I will be happy to answer.

**Murphy, Kathryn, Chair**

I think we are going to try to hold the questions if possible until presentations are complete, but thank you very much.

**Khosravi, Reza**

You are welcome.

**Gieselman, Wayne**

We'll go ahead and I think have the county go next, whoever is representing the county.

**Bunn, John**



My name is John Bunn, a member of the Board of Supervisors of Fayette County. I want to thank you very much for the hearing today. I am going to talk a little bit on Fayette County's concerns.

We as Fayette County do not in any way want to discourage hog lots in Fayette County. What we are disputing here is the location of this lot. Monday I just, the past speaker here just quoted that this hog lot is 7,000 feet from the town. Monday I had the Fayette County engineer's office, the Fayette County sanitarian, and previously the NRCS had measured this location with an aerial map and a ruler like they use, where they measure as the crow flies, not as road miles, and the nearest they could come to it, it's 3,750 to 4,000 feet from town; that's diagonally. On the road it's probably 1.25 mile, but air does not move in square corners. We have many concerns about this operation. We just heard a presentation on the wells. This area, as near as we can determine with the sanitarian's help and that, there's nearly eight, and possibly more, shell sand-plant wells located within one mile of this proposed operation. This is a concern of ours, cause we really aren't talking aquifers here, we are talking surface water here that people are using. This is outlying families in the area. We are worried about the quality of life in the town of Westgate. Westgate is a very active little town. We have one woman for sure and several others in Westgate, the closest resident to this in the city of Westgate is on oxygen 12 hours a day and the reason I happen to know she is, she is my mother-in-law. She is probably the closest resident to this hog facility in Westgate and she has to be on oxygen 12 hours a day. So that's a concern of ours. I'm a diabetic and have a little trouble focusing my eyes once in a while so excuse me. We also have concern as Fayette County some of the property owners close to this facility. We have property owners who have bought ten, twelve acres in this wooded area just north of this facility over a period of years, probably within the last 20 years, 10 to 20 years, with hopes of building a retirement home there. When we go out and measure the site distance from the facility, sure we're adequate because there is no residents on these pieces of property, but these people have bought this property and I guess we beg to differ a little bit with the DNR. I personally believe that it should not be the distance to the nearest residence, it should be the distance to the nearest property line because it does create a concern with the people who bought this property.

Floodplains: we'll touch a little bit on this. We're concerned in Fayette County because the floodplain maps are so old. I believe in 1988 or something like that the Iowa legislature asked that the DNR redraw the floodplain maps. Well, there has been no funding and it's no fault of anybody else's, it hasn't been done. I live a mile and a quarter from this facility and I've got no objection to it because I realize I am in an agricultural zoned area, but I personally seen the water lots of times flow high. I think we have to realize that no matter what our floodplain are drawn at the drainage of our agricultural districts has changed tremendously in the last 25 years. We have plowed up all the sloughs, we've eliminated all the fence rows, so floodplain maps that are 20 years old I don't think are probably adequate to this date because the water I know on my farm, the water raises a lot faster than it did when I first moved there 30 years ago. I realize a lot of this is hearsay, but it's the truth. You know the NRCS on this branch of Stoe Creek, I'll call it a branch of Stoe Creek and Stoe Creek, Stoe Creek happens to run through my property for about a mile, they have spent hundreds of thousands of dollars to try to ensure water quality, preserve our surface water in the form of recurring bumper strips I have about 60 acres of them myself. We have a lot of CRP acres in strips, we have filter strips established within our fields.

Downstream about a 1.5 mile from this proposed facility the DNR, not the DNR, the NRCS established on the Robert Leach farm a rather large wetland area. I think we have to take all of these things into consideration when we look at this because we don't know. This building is located like 240 feet or roughly 200 feet from this branch of Stoe Creek. I guess only God created things maybe that were perfect, we still have to look at this the way we think it will affect Fayette County as a human error. Human error will not pump out or something. 240 feet is not very far to a waterway that leads into some major waterways in NE Iowa. In Northeast Iowa we're separate from a lot of places in the state, we're a beautiful area of the state. It's a highly recreational area. We as a county invest thousands of dollars a year in the things of tourism and recreation. Three or four NE Iowa counties are unique. We have trout streams and so on and so forth in that area. The Turkey River, the Volga River, the Upper Iowa River, the Wapsipinicon River all are major drainage basins in NE Iowa. Our county engineer, I'm going to have some letters read. We are real concerned on this location. If this location was located in any other, even on this man's property, it would be a much better location because there is only one way out of this piece of property. There is a small bridge just to the north of this whole setup that is very, very poor condition. As county funds are only so much we can't afford to build a new bridge on a low traffic area like this road will be so they will be stuck with one way out. Our engineer, who's left us, but in the meantime he estimated that this facility, because we have a new block out west of Westgate, could cost up to \$30,000 a year in damages to our roads. On a decent year it might not cause any, but you get a wet spring, wet fall, you know, with a lot of traffic running over. Let's see where else am I going here?

Anyway, a manure management plan, we just discovered this in the last 48 hours or so. There are several pieces of property on the manure management plan we don't agree with. It's absolutely impossible. For instance, on the building site that Mr. Anderson is acquiring from the seven acres he's acquiring from Mr. Pagel, them seven acres are listed in the manure management plan, unless he is going to spread manure over the buildings, that was never subtracted. As you look through the manure management plans you find areas of permanent pasture, wooded lands, and I'm not saying that he does not have the acres to spread the manure on but let's make sure these plans are correct. We got areas on farms that got filter strips and that on. Manure cannot be spread on these filter strips. You have 100 acres of field and you have nine acres of filter strips. Those nine acres cannot have manure applied to them. In some other locations we got five or six acres of permanent pasture that are listed in the manure management plan. We as a county have a concern over these things. We talk about DNR regulations on these things. A man lost 600 head, 250 pound hogs. I went to a supervisor's meeting that morning. We started to receive phone calls already. What are you going to do about this? So we say, well, we had our sanitarian call the DNR office at Manchester. We said we just turned it over to the sanitarian. The DNR went out and checked. Yeah, he'd lost the 600 hogs. The regulations were that he was supposed to bury 40 or 42 or something per acre. These 600 hogs were all buried in one trench. It was all done and nothing the DNR could do about it. So we do as a county have concern about regulations and how regulations are enforced when we have this kind of situation that goes all the way down to how is manure going to be spread, is these acres going to be correct. I guess at this point we got a few people from the town of Westgate that would like to read a statement if that is allowable and that is about all that I'll have to say at this moment. Okay. Thank you.

**Murphy, Kathryn, Chair**

Thank you, John.

**Hurd, Chuck**

My name is Chuck Hurd and I am a resident of Westgate, Iowa. I am going to hand out this handout here so you can kind of follow along.

I want to thank you for listening to our appeal to stop the construction of this proposed hog confinement operation in Fayette County, Fremont Ridge.

We are not opposed to county farms or to raising hogs. We are opposed to the construction of a hog factory within 4,000 feet of our town of Westgate and in a closer proximity to several rural homes. This will be the largest hog confinement operation in Fayette County.

We have many concerns regarding this facility. One of the main concerns is air pollution and the influence it will have on our health and our quality of life. Many studies have been done which shows that the gases, dust, and other factors in the hog confinement facility can be detrimental to the health of the people who work in them. We are concerned about the health of the people who will be employed at Fremont Ridge, the people who live in a close proximity to the facility, and to the citizens of our community. Several older residents have respiratory ailments and one is on oxygen. This hog factory will be putting our most valuable commodity at risk, which is our health.

We believe the guidelines for the facility should include measurements from the property lines of adjacent homesteads, not measurements from the residences. One of the landowners is planning to build a retirement home on his property, but this facility will be too close for him to be able to do this.

Odor created by the hogs in this facility, whether spreading manure on local land is another concern. Our quality of life and our property value will be at risk. Our community has many outdoor activities throughout the year. A cemetery is within a half mile of the proposed site, a local church, and several thriving businesses that rely on clean smelling air. The odor created by this hog factory will be a nuisance.

We are also concerned about water pollution, the proposed building site in the area that has flooded several times in the past 40 years. The farmer who lives adjacent to the site can remember pulling dead cattle out of the trees in that area that flooded. The DNR has ignored the fact that this area has flooded stating that this area is not in a floodplain according to their maps. It is a fact that these maps are outdated. The DNR was ordered in 1993 to create new maps but were not given the money to proceed. As far as we know, there hasn't been any testing done to see if there is alluvial soil at the proposed site. This should be done to clarify that it is in a floodplain and our town of Westgate has flooded in 1962, 1993, 1999, and is on higher ground than the proposed site. We also want to mention that there is at least eight sand-point wells within a mile of this site. It should be an indication of the type of soil we have in the area.

We would also like to protect the investment of the government and the adjacent wildlife refuge. Thousands of dollars have been put into the Stoe Creek project to preserve the area. This is the creek that flows through the proposed site. Governor Vilsack has vowed to clean up the state waterways. We don't believe this hog factory would help him to accomplish his mission.

We would like to draw your attention to two letters written by the Fayette County Engineer and the Fayette County Environmental Health Administrator to the DNR.

**Tillen, Jeanine**

My name is Jeanine Tillen and I don't live in the town of Westgate although 95% of my heart and soul belongs to that town. The letter was dated September 27, 2002 and it is in response to the proposed hog confinement operation in Fayette County. It is written to Robin Pruisner who used to be an employee of the Department of Natural Resources and it's from our county engineer. It states:

Dear Ms. Pruisner:

The following comments are response by Nick Anderson, Cedar Falls, Iowa to construction of hog confinement operation in section 15, Fremont Township, Fayette County, Iowa.

The road on which this facility is to be located has crushed rock surfacing and will not sustain the volume of traffic including heavy trucks or tanker anticipated to use this road without severe damage.

This facility will create an increased safety risk for potential motor vehicle accidents due to the increased traffic it is going to create.

Dust generated is going to significantly increase cause concern for health safety and a demand to the county for a higher level for road surface.

Great restrictions on the bridge located adjacent and just upstream from the proposed facility will restrict access to the facility from one direction.

Numerous local landowners have commented that flooding has over topped the road and that includes the bridge.

The soil on which this facility is to be constructed is not well suited for this type of construction, especially the Floyd Series 198B which is wet and low in strength.

For the above reasons we do not recommend the approval of the proposed facility.

Sincerely,

Dennis Egger  
Fayette County Engineer

Thank you.

**Lay, Don**

My name is Don Lay. I am just a concerned citizen of this. I live two miles from the site. This letter comes from Fayette County Environmental Health and I'll touch on some things here.

Pollution problems are occurring at feed lots including lagoon, overflows, and improper land application of manure, and equipment failure. An estimated 2.3 million fish and countless numbers of other aquatic life forms were killed in Iowa in 134 fish kills events from 1995 to 1998. The danger created under current manure management practices and regulations goes far beyond fish kills. Kills such as unpreventable, yet they touch and destroy the very infrastructure of Iowa's natural resources. In the past four years alone there have been over 50 manure spills in Iowa's streams, rivers, and lakes. At least one spill contaminated ground water by flowing into an agriculture drainage well.

The air quality concerns include odors, gases, airborne particles, hydrogen sulfate, ammonia sulfate. Ammonia gases are a particular concern to the confinement workers and neighbors. Also, increases in the concentration of livestock have led to manure production that exceeds the fertilizer needs of crops being grown in some areas of the state which has led to elevated phosphorus levels in surrounding areas and increased in the risk of water pollution. As a community and a state, we need to acknowledge the respect and vulnerability and importance of these vital local resources.

Thank you.

**Murphy, Kathryn, Chair**

Thank you.

**Herd, Chuck**

Part of this John kind of touched on so I'll just kind of go down here. There is presently a hog facility near Oelwein, Iowa, the Vic Miller farm and because they had a lagoon that was overflowing and has been overflowing for two or three months. No action has been taken and we are kind of concerned that if the DNR can't care of its business now, how can we depend on them to take care of our concerns if this facility is built?

If this facility is approved which we'd like to not happen, we would like to have some stipulations, some safeguards.

Mr. Doug Pagel, the landowner, owns the land all the way to the next road to the West, which is also the location of his home. We would like him to build the facility as far away from Westgate as possible, would also put it in closer proximity to his residence thus enabling him to keep a closer watch on the operation.

We ask that the Fremont Ridge hog confinement operation be built with safeguards for spillage containment and an odor control. We ask that every effort be made to reduce odor and pollution,

including but not limited to feed additives, pit additives, and charcoal filtration system, and a screen filtration system.

We also ask that the DNR make regular visits, weekly if possible, to make sure the facility is complying with regulations..

We would also like the owners of Fremont Ridge hog confinement operation to pay for the upkeep of the roads which will be damaged by the frequent, heavy traffic which will be generated by this facility.

In conclusion, I guess I would like to mention that the first public meeting we had before this even received notice, the town of Westgate, the council, the mayor, nobody was notified that Mr. Anderson was going to pursue this facility. You know, usually as a good neighbor you talk to neighbors and citizens in the area. We were not informed of it and after a couple hours of heated discussion and knowing the resistance of our town, I asked Mr. Anderson that night if he would find other suitable land, would he consider it building it someplace else. He said he would do that. Well, I found 7.5 acres of land that would be suited for this. I talked to Mr. Anderson last night. He looked at the land yesterday, and I think this land would work for him, and as a good neighbor I would like to see him just walk away from the citizens of Westgate and build in a more rural setting. It's seven miles from the town and I think it would help everyone involved.

Thank you.

**Murphy, Kathryn, Chair**

Thank you.

**Pashawn, Don**

My name is Don Pashawn, the mayor of Westgate. Everybody has touched on just about everything except there is a little conflict in a few items. Our city well there is only 93' deep. We've had two farmers right next to the well who have seeded down their farms so that they don't pollute our well with chemicals. Nobody has mentioned that. We have over 75 kids in our little town. Why do we have to endanger their lives and their ball playing, everything like that. We're not considering those things. We need to do that. We've got probably 50 older people that are retired in that town. They didn't expect this to happen. We gotta look at that. The cemetery; they said the cemetery is a half mile away. It's not, it's an eighth of a mile. I mean when you stand out there and you're burying somebody, you're not going to want to smell this manure. We have to think about that again. In 1999; I've seen the creek flood three times in the last 30 years, okay. In 1999 it flooded, took out the bridge or dam down to Hazelton, Iowa which is a DNR park, did a lot of damage, stuff from clear up in our area ended up down in that way. We need to look at that. That's about all I have to say. Everyone else has covered everything; but we gotta think about the kids, the older people, and our city well.

**Murphy, Kathryn, Chair**

Thank you.

**Wolff, David**

My name is Dave Wolff and I would like to thank you too for the hearings. We have a lot of little things going on in our town also. We host little league, the world series tournament, the play comes through our city that we just started in the last few years. We have lots and lots of games here through the summer. Lots of people use are park for family reunions and stuff. Less than a mile away there is going to be the smell, I'm sure will make it through there. If you look at your watershed maps you'll see that it's kind of a valley and it's going to work it's way right back up into the town. I'm a little bit worried about the garden that the other side is going to bring up to the table that it's going to be good for our economy. From the stories I hear, the feed will not be bought in Fayette County, it is going to be bought in Edgewood, so it's not going to help our economy that way. The only way that this could help our economy is if the demand for pork is going to be higher. This is not going to make the demand for pork any higher because he builds this; it is just going to take away from other people raising their hogs. He also states here in this letter that there is only one person who lives within 1/3 mile away from the site. He doesn't consider the town being that close plus there are six people within 1/4 to 1/2 mile away from it. Plus there is a cemetery less than 1/2 mile away. I don't think the people and the families who put their family members in that cemetery want that smell when they go out to visit. To the north is the only sufficient amount of trees. To the east and to the south it is just a fence line with a cottonwood maybe every 20 yards. It's not sufficient.

**Gieselman, Wayne**

Is everyone done for Westgate. I am not trying to cut anyone off, we have a few minutes left. If not we'll turn it over to the applicant in this case.

**McAfee, Eldon**

I'm here this morning on behalf of the applicant, Fremont Ridge Farms with Nick Anderson and then the producer who will be working with Nick on managing the site, Doug Pagel. As Chair Kathryn Murphy is aware, unfortunately I have another engagement that I need to leave here at 11:00. I apologize for that. I just wanted to introduce my client, Nick Anderson. Nick will be giving much of the presentation about the operation, and that's probably better anyway. Nick will be coming up in a minute. Doug Pagel is seated over there by the wall. Nick will be talking about Doug's involvement in the operation and then if there are any questions I have my associate, Mike Warren here who along with Mike Murphy, I'm sure, can handle any legal questions that come up. Again, I apologize for having to leave, but I just wanted to make that introduction and we'll have Nick come up to speak to you then. Thank you.

**Murphy, Kathryn, Chair**

Thank you.

**Anderson, Nick**

I'm Nick Anderson. I'm the manager of Fremont Ridge and the owner of Fremont Ridge. Let me give you a little insight on who we are and kind of what we are about. This is a family operation. My wife and I own Fremont Ridge. Doug Pagel is a farmer in Westgate, a young farmer in Westgate. The manure in this farm, he needs or wants to expand his farming operation and diversify and at the same time financially he is stretched as thin as he feels comfortable with so we've reached a common agreement where I will buy some land from Doug, construct these facilities, and Doug will do the day-to-day management, taking care of the pigs, taking care of

the manure. The manure will go on all of Doug's land and it will replace commercial fertilizer that he'll be using so it will lower his cost by half about for those acres he puts fertilizer on. and it will take care of 60 to 70% of his fertilizer needs. We think that's a good thing and I guess we think that's a good thing. Also, he'll get paid for taking care of the pigs and that's cash income for him so he'll be able to enhance his family farm's income at the same time. If he went to town and got a job it would be hard for him to take care of his farming. The way it is now he can just combine the operation. The intent is sometime down the road when Doug feels comfortable and financially strong enough, he would buy me out. I mean this would be a part of his operation. The buildings are somewhere a little over 2,000 feet from his house or close by so he can do the chores. He lives right there. He and one other party adjoin this land. Doug, of course, it's close to where he lives so he can do the chores. The other neighbor that adjoins are very supportive of this project and had written the supervisors to that effect. In their last physical meeting when they agreed to appeal this, Paul and Gracey Griffith wrote the supervisors saying we support this project and that's the only two people who adjoin the property. So even though I will always have oversight over the property and be in control of it, Doug will take care of the day-to-day operations and he is experienced with livestock and capable of doing it.

There is some concern about water and flooding and I don't know quite how to address that. The best way I know how to address that is we have tried to respond to all the issue that have been raised by anybody and nobody is sure quite how much water was on the bridge, or over the bridge, or close to the bridge so we have essentially said to the DNR we will build this so that the top of our pits will be three foot higher than the bridge deck. Downstream, half a mile down stream from this bridge that road top will be 11 feet lower than the top of our pits, so in that half mile we would have to have an 11 foot drop to have water and that's not likely to ever happen. There's been a lot of conversation about how close we are to town and there have been significant numbers. Truth be it, that I don't think anybody is lying about that. It's just that we're measuring from different places and it looks to me like we are some over 5,000 feet from our building to our closest house in town. Whatever it is, we are, I think, well over two and maybe three times the legal limit from a separation standpoint so I don't want to get into an argument about how far it is, but legal distance requirement I think we exceed that at least by two. Some concern about the water in the sandpoint wells. This is a deep well and will come from a different aquifer than the shallow wells so I don't think that should be an issue. Soil type is some concern that Floyd soils are typical in that area. In fact we'll mostly be on Flagler soil which is a better building soil, but with the tile being lower than the bottom of our pits any water issues and any building issues should go away. I have talked to civil engineers about that and everybody is comfortable with that so I don't think that is an issue. DNR is comfortable with that too. Beyond on that, the cemetery thing, we're 3,046 feet from the cemetery. I don't think there is anything else that I have to answer. Thank you.

**Murphy, Kathryn, Chair**

Thank you.

Are there any other speakers for the applicant, sir, for you?

**Anderson, Nick**

No.



**Murphy, Kathryn, Chair**

Okay, then we are ready to proceed to questions by commissioners. I'll open it up to you, any of the individuals that have presented.

**Priebe, Gary C.**

I have one question for Reza. When they say that the soils of this facility are wet and low in strength, what do you mean "low in strength?"

**Khosravi, Reza**

They are saying that the soil doesn't have enough strength to hold onto the building, but in civil engineering they really call the measures that are appropriate to build that foundation and I don't think in my judgement, I'm not a civil engineer myself, but I have talked to some people and in their judgement there's no problem especially when they take care of the water that gets to that. This is a concrete that will meet our concrete standards so the soil itself is not used in the building of the construction. If it happens to be that it has to be changed, put a better soil there, more strength, they will do that so that's my response.

**Priebe, Gary C.**

Okay. The one other question I had: You say that they are 7,000 feet from town and they say they are 3,500, and he says they are 5,000. Is this just

**Khosravi, Reza**

That's what we measured in our GIS, we just went with the line, but they are looking at other, did not go with the line. That's what we measured it on was GIS.

**Murphy, Kathryn, Chair**

Would you state for us though what the minimum requirement for the commissioners again, what the minimum requirement of the separation distance would be.

**Khosravi, Reza**

1,250 feet from the residences.

**Priebe, Gary C.**

Twelve hundred and fifty feet?

**Khosravi, Reza**

Yes.

**Peckumn, Jerry**

How did you measure that 7,000 feet, was that as the crow flies? It must not be?

**Khosravi, Reza**

I did not measure that. I asked our geologist to do that. They have the experience of looking at the GIS maps and they draw the lines from the proposed site to the nearest house in the town and they said. The benchmark was the Westgate city wells. This site is 7,030 feet from the Westgate

city well that is in the southern part of the Main and Cass Streets in Westgate. I may add that this is not the only facility there. There are already one swine finisher that is about 3,780 feet from the town of Westgate. There is another dairy and lagoon that is 7,075 feet from the city, and there is Westgate sewage lagoons, two lagoons that are about 3,865 feet to the city of Westgate, so this is not the only facility there.

**Peckumn, Jerry**

Reza, would you go over again how you determined that this is not a floodplain, what methodology was used?

**Khosravi, Reza**

Okay. I may ask the man in charge to come and say. Kelly Stone, please.

**Stone, Kelly**

I am Kelly Stone, Supervisor of the Water Resources Section at DNR which does include the Floodplain Management Program and Reza let me know that there would be questions on the site regarding the location of the floodplain relative to the proposed buildings. We'll bring up the power point, but we'll go with the map at this point. As a precursor to looking at the map, we need to keep in mind the limits of our regulatory authority within the DNR and how that is changed with Senate file 2293. Reza touched base on this issue and just to repeat that for clarity and to lead into what I have to say: Senate file 2293 prohibited construction of feeding operations on what the bill defined as 100 year floodplain. In the definition of what they had for 100 year floodplain, they said of a major water source. The closest major water source is 15 thousand and some feet away which is the Little Wapsipinicon River. So because this site is not proposed to be located near a major water source we could not strictly prohibit the site based on 2293. So, that avenue, if you will, authority of regulation is not available in this case. The next level of regulation would be with the floodplain rules that are on the books now in the administrative code and have been for many years, in most cases the Floodplain Management Program has authority over floodplain areas that drain ten square miles or greater. In this case the buildings would be located at a place along the unnamed tributary to Stoe Creek and, correct me if I'm wrong, but it's in a four to five square mile drainage area at that point so the location actually falls below the regulatory authority even of the floodplain development. The heart of the question is, is this located on the 100 year floodplain? And to give a little background on what a 100 year floodplain is I always have to say 100 year floodplain rather than of just floodplain because floodplain can be quite a large expanse of any low-lying area near a river that may have flooded sometime in the past several thousands of years. The 100 year floodplain is the area that would be inundated and would be flooded over by the amount of flow that statistically could happen once in 100 years, that one percent chance. I say statistically and that of course brings up some mathematics to it but it is all really based on hydrology, you know the run off and so on from the area and the hydraulics which are the flow between the stream and the valley so what we get to is what we call Q-100, the flow that could happen statistically one time in 100 years. Four parts of the state, roughly 22 counties, have been detailed studies where a lot of calculations have been done and those flows have been calculated mostly by the United States Geological Survey so that the flow is known and can look at the topography and actually calculate an elevation relatively accurately with their floodplain, what the 100 year floodplain would be. Another 44 counties in the state, there are approximate maps. Fayette County is one

of those counties that has an approximate map. In those locations the level, the elevation of the 100 year flood is not known. It is done more with the topography at the site to give a very rough estimation of the 100 year floodplain. On the map is the hatched area, Ken if you want to advance a couple of slides we can bring up on the screen what is also on the map that Reza has. On the hatched area shows again the approximation of what would be a 100 year floodplain.

As you know in that area the hatched area on the map that Reza has covers the contour that would be at 1,050 feet, so an estimate from the approximate map would be that the 100 year flood elevation would be at 1,050, 1,051 along in there. That hatched area is shown to scale and is shown to be well over 100 feet from the building sites, probably closer to 175 feet and they are placed on that map to scale, based on the distance from the stream itself. Now again, I always have to say approximate on these maps just to check the map approximation we did do some estimation of what a 100 year flow would be in this area by taking a topo map and delineating the drainage area to that point and using some equations, some statistical equations called visional equations. Those are based on measured flows in other locations and the factors in that equation can be used to estimate flows in other locations, or small drainage areas those equations estimate very much on the high side. So the number that we would get would be on the high side for a flow but what we did was get a number for a flow and then using the topographic maps, projected a cross section for this and then using some more maps put that flow through that cross section of the stream and came out that using those estimates that would be on the high side put the 100 year flood elevation at about 1054, 1055 feet. That would expand the 100 year flood area compared to what you would see on the map but it would still not be within the reach of those buildings. So again we can't prohibit this because it's not in the floodplain of a major water source. We wouldn't even be able to require a permit because its less than a 10 square mile drainage area, even if it were in a 100 year floodplain area. The discussion has focused some on how much water has gone over the bridge. Is there a pointer here? You can probably see it to the northeast of the site, where the stream flows under a county road right there. That kind of observational information is not what can be used as far as regulation, but as I understand this, the Andersons who proposed the site have taken that information and have agreed to locate the top of the pump-out pits at approximately the elevation three feet above that bridge elevation. Since we don't have direct regulation over that, that to me seems like a very good idea to build in a measure of safety. As far as hydraulic consideration of what may have happened to inundated that bridge to have flood flows go over that, this is a very small drainage area. There could have been quite intense rainfall in that drainage area. Many factors could have come together to have quite a flow right through that area and over the bridge had there been any obstruction in the opening of the bridge, could have tended to go over the bridge rather than through the opening and count the factor here as a railroad. If flow is restricted at all through that railroad bridge could have acted somewhat as a levy to further exasperate the issue there and raise a lot of water to go over that bridge so yes that's good information to take into account in a design but not enough known to be able to actually use it to come up for a good number for the 100 year flood. Someone also made mention of this location. This quadrangle map from the United States Geological Survey would place that bridge elevation at 1,051 feet. Again under ½ mile from the site down to there so flood water would have to back up roughly 10 feet to be at the level of those pump-out pits. Any questions on that that I can answer for anyone?

?

**Stone, Kelly**

Yes.

Baushaw, Don

You were talking about the bridge that comes into Westgate. In 1999 the flood came through in May and you couldn't get out of town nor could you get in town. Everything around the town was completely surrounded. And then it flooded again in July.

**Stone, Kelly**

As far as using the observed information based on water levels going over bridges, a couple things could happen that again that particular bridge opening may have been somewhat clogged as far as the design on this bridge or the bridge near Westgate

?

Inaudible.

**Stone, Kelly**

Again, in 99 it was substantial amount of water observed, but would not be able to be used as regulatory flood flow unless a study were done of the hydrology and the hydraulics of that area. So again our best method to approximate those flood flows would be the first step to look at the maps and then go from there to verify how far, you know high those are with some of the statistical means.

**Murphy, Kathryn, Chair**

Kelly, we do have questions from the commissioners. I believe it is the commissioners time to ask questions.

**Peckumn, Jerry**

Kelly, does the water flow west?

**Stone, Kelly**

Yes. Again Stoe Creek actually is here. Southwest, then to west. And at this location the unnamed tributary from the south, southeast, to the west.

**Peckumn, Jerry**

Could I ask what these pictures were that you passed around.

**Murphy, Kathryn, Chair**

I recognize the mayor of Westgate. I remember, but I'm sorry sir, I don't remember your name.

**Pashawn, Don**

I'm Don Pashawn, the mayor of Westgate, okay.

Picture #1 right here is water right in our town.

Picture #2 is right from where this water goes, right here, and crosses the road and you can see it going down the creek, heading for where the proposed site is. This shows the water after it's

crossed the road, so it does widen right up. 1962 that bridge was destroyed, it was taken out of there and it was pushed probably 2.5 to 3 miles away. It flooded another road that they don't have up there. It took that whole road out. We sent newspaper clippings to the DNR so you guys probably have them somewhere. If you could look them up you could see the damage that it really did. This is the water. This is where it begins and that's what it looks like when it gets down to where the site is going to be.

**Peckumn, Jerry**

Would you repeat where you said the bridge ended up?

**Pashawn, Don**

The bridge ended up probably 2.5 to 3 miles from where it was taken out. It ended up in a timber that I owned there for a while and there is still part of the bridge still in the creek bed.

**Peckumn, Jerry**

So the bridge went 2.5 miles?

**Pashawn, Don**

Yep.

**Peckumn, Jerry**

That doesn't happen very often.

**Pashawn, Don**

No it doesn't. But the water was that high. It was terrible.

**Peckumn, Jerry**

Are you talking about a wooden bridge.

**Pashawn, Don**

Wooden bridge. Here's another picture for you folks.

**Murphy, Kathryn, Chair**

You may pass it around if you would please. Thank you.

?

This is a picture of the bridge and then that shows how high the water was on that bridge.

**Murphy, Kathryn, Chair**

Lisa, you have a question?

**Davis Cook, Lisa**

Yes. Mr. Mayor.

**Pashawn, Don**

Yes.

**Davis Cook, Lisa**

So the bridge is right there on that road that goes between the #15 and the #1070. So the bridge is right up in there?

**Don Pashawn**

Right, right.

**Davis Cook, Lisa**

Are you saying that

**Pashawn, Don**

Right there. It took it clear down and across the next road over there which is right there and down another mile to a paved road; it's paved now, it wasn't at that time, and took it from there

**Davis Cook, Lisa**

And this was 1962?

**Pashawn, Don**

1962. It flooded in 62, it flooded in 91, 93, and 99.

**Davis Cook, Lisa**

In those years when it flooded was the water over where the proposed site is?

**Pashawn, Don**

Yes, it was. And that picture he's looking at, the newspaper clipping, is from Earl Maylas. He's a neighbor there, he lost his farm, his cows, everything at that time. There was a turkey farm there. It wiped that turkey farm out completely. They had to take turkeys and stuff out of the trees.

**Davis Cook, Lisa**

When that area flooded, where did the water flow to?

**Pashawn, Don**

To the west. That creek flows to the west and keeps right on going and runs into the Wapsi River.

**Davis Cook, Lisa**

What's the creek that it runs to? Is it the Stoe?

**Pashawn, Don**

Stoe, right.

**Davis Cook, Lisa**

And Stoe Creek goes right into the Little Wapsi

**Pashawn, Don**

There's another creek before it gets there. What is it? It's the one that goes by King's farm and down in there.

**Pashawn, Don**

That's Stoe, too. Okay.

**Murphy, Kathryn, Chair**

You said it would be more than what we see on the map but not to the proposed sites. Can you just kind of ball park, I realize that's not totally scientific but kind of where you're thinking it would be?

**Pashawn, Don**

One more thing just real quickly. Let me use your pointer again. Okay, right about in there in 1999 we had to, the city had to go and retrieve a gas tank, one of these big LP tanks, that had floated from town, from Cannon's Greenhouse, or Cannon's Welding Shop, down that far. You're not talking about a little water, you're talking about a lot of water.

**Stone, Kelly**

Okay, your question for me was to ball park

**Murphy, Kathryn, Chair**

You were talking that you had done some higher calculations, or you went over and above your high ones, and then you said it would come in more than what you show on the map but still it would clean the sites. Is there, how much closer I guess is what I'm wondering. I realize that's not scientific.

**Stone, Kelly**

Right. And it really was a double check of how accurate our maps in delineating the floodplain; but, again the estimate we came up with was 1,055 feet elevation for the 100 year flood and a little bit of background information will help in this. This heavier red line is 1,050 feet. That's the contour line and the next line which is typical on the USGS maps, 10 feet \_\_\_\_ which is the distance between the contour lines in elevation so its going to be hard for me to hold it steady enough. The 1,055 you would have to interpolate, you know guess in between those two line where that would run. As you get closer to the bridge area there is 1,060 and of course there is 1,050 so if you drew a line along I this area would be the 1,055. So that's closer.

**Priebe, Gary C.**

The top of the pump-outs are going to be at what 10?

**Khosravi, Reza**

1,061. Three feet higher than the top of the bridge that is 1,058.

**Murphy, Kathryn, Chair**

Mr. Pagel, since this is your land and I know you said you wanted to make a comment in regard to this, this would be a good time to do that if you would.

**Pagel, Doug**

My name is Doug Pagel and there is two other bridges when you follow that Stoe Creek down and those two bridges washed out also and those could possibly be the bridges that were washed out and down in the timber here. This bridge here, I don't know if it was completely washed out or not. I was thinking the gravel on both sides of the road was washed away is what I remember as a kid. I was quite young at the time, but that is basically what I wanted to say. In '99 the creek, I have buffalo out in that pasture and I had to do a lot of fence fixin' that year, you know, and in 92, 93, 99 also and that water didn't get anywhere near the top of the bridge or anywhere near. It probably got three or four feet from the bottom of the bridge you know going down, and that was the year they were concerned about.

**Peckumn, Jerry**

Where is your house?

**Pagel, Doug**

It's in section 15.

**Peckumn, Jerry**

It's not on this?

**Pagel, Doug**

Anyway, my house would be right here at the black mark. When the water gets up it gets up in my yard there but it flattens out and it takes a lot of water. There's another creek that comes here and there's times the water gets pretty high. You know you get a big heavy rain all the way around, it gets quite high but never gets that high up in here. Where it gets high is over on this side, that's where it really starts to spread out.

**Peckumn, Jerry**

You said it gets in your yard. You mean it gets up to your house?

**Pagel, Doug**

Well my house, I'm, well it don't get up in my house, but it gets up in my yard. I'm not that far from the creek. I'm probably 150 yards from the creek.

**Tobin, James (Kelly)**

Who picked this site or why did you pick this one over somewhere else.

**Pagel, Doug**

I thought it was convenient for me. I mean it was there where I could do chores. I really didn't have a place on the farm anywhere else that would work for me any better.

**Tobin, James (Kelly)**

How big is your farm?



**Pagel, Doug**

It's 160 acres there. There's timber up in the one end and there is high lines that go through there.

**Tobin, James (Kelly)**

How far do you have to drive to chore?

**Pagel, Doug**

What I do is I come right down off the bridge here, I'll drive right here, and I have a lane with a filter strip that comes down here to here see, so I don't have to drive that far.

**Tobin, James (Kelly)**

So where do the trucks come in? From this other road?

**Pagel, Doug**

Most of the trucks will come in from the south here and now when I haul manure too, I won't be going down this road here I'll be coming across here and this way probably until at a time when they get the bridge repaired and fixed. They'll be going through my field, not down the highway.

**Tobin, James (Kelly)**

How far will you be hauling manure?

**Pagel, Doug**

A lot of farms are two to three miles.

**Tobin, James (Kelly)**

It looked like on the manure management plan a lot of them were seven or eight.

**Pagel, Doug**

There are some of them that are that far.

**Peckumn, Jerry**

How will you haul it.

**Pagel, Doug**

I might have it all custom hauled.

**Tobin, James (Kelly)**

By what?

**Pagel, Doug**

By tractor and wagon or tractor and tanks.

**Tobin, James (Kelly)**

The big six wheelers?

**Pagel, Doug**

Yeah. I'll have a custom hauler do it.

?

They will inject it?

**Pagel, Doug**

They will inject it.

**Peckumn, Jerry**

We've had discussions about the economic feasibility of hauling manure beyond two miles. Does that concern you?

**Pagel, Doug**

Not at this time it doesn't, no. I've talked to them . . . between six and seven cents a gallon to have it hauled within four miles.

**Peckumn, Jerry**

What if it goes to eight miles.

**Pagel, Doug**

Well then I will have to pay a little more, but it's not going to be that much more.

**Venner, Rita**

I have a question.

**Murphy, Kathryn, Chair**

Rita.

**Venner, Rita**

My question is for Mr. Bunn. Mr. Bunn you said that there were eight shallow wells in the area that would probably be affected by this.

**Bunn, John**

I'm talking about sand points.

**Venner, Rita**

Okay.

**Bunn, John**

You're familiar with what a sand point is.

**Venner, Rita**

I know what a sand point is. I'm a farmer and we have one on our farm. The well that is going to be used goes into an aquifer?

**Bunn, John**

Yes.

**Venner, Rita**

So how are you assuming that the shallow wells will be effected.

**Bunn, John**

Well, one guy just built a new well about a mile from that operation just last week. Dug across this hole under here, when he dug a new well south of me he had to go through 40 feet of sand. I'm just scared. Sand is a pretty porous soil and if it gets a spill or leakage from of these pits or something get down into the sandy soil, where is it going to go?

**Venner, Rita**

So this is an assumption that you're making.

**Bunn, John**

Yeah. And I'd like to make one other comment. A little bit of the problem, if I could, . . . on the floodplain; that line you see down through that map is an old railroad grade that restricts the water from spreading during high water just like a dam, just like a levy along there keeps the water on the silty side of the railroad tracks. I believe that diagonal line is the old Chicago Northwestern Right of Way and that does cause some problems down through there. But the shallow wells, did I answer that for you.

**Venner, Rita**

Yes. My information is that you assume it is going to.

**Bunn, John**

Well, if it gets into a sand, porous soil, it's not going down through lime rock or anything else to get to any other wells, I know

**Peckumn, Jerry**

Just doing a little calculating. Are you sure about the six to seven cents.

**Pagel, Doug**

Six to seven tenths of a cent. Sorry about that.

?

Some of them farms in the manure management plan are up to 11 miles away?

**Davis Cook, Lisa**

Reza, I have a question for you. There's been talk about a cemetery that is it sounds like on the outskirts of Westgate or somewhere in there and there has been a lot of, I have been concerned about how far you have measured the cemetery and are there any regulations regarding setback

distances from religious institutions or religious facilities. I know we talked about it, it's in the matrix and just don't know if there are any setbacks.

**Khosravi, Reza**

From public areas it's 1875 but we rely on field office report that they actually go and survey the site and measure all distances to the residences and cemetery or whatever. But the distance to the cemetery that should be a public area is about 1875 required this exceeds that.

**Davis Cook, Lisa**

Someone said today that the cemetery was 1/8 of a mile from the facility.

?

It's not a quarter it's probably an 1/8 mile away as the crow flies, okay. If you go around the road, make the curves, then you can stretch it out, but no, an eighth of a mile.

**Khosravi, Reza**

This is the facility. This is the cemetery and this 3,048 feet.

**Davis Cook, Lisa**

Now how did you come up with this?

**Khosravi, Reza**

This is the map from my geological survey so that's the distance here.

**Peckumn, Jerry**

How accurate are these?

**Stone, Kelly**

Do you know Asia, I referred to Asia a couple of times. She's the floodplain engineer in the group who has done the analysis. She can do it many times faster. Do you have a feel for the accuracy of the USDS contour maps. Can you remember that Wayne?

**Gieselman, Wayne**

Five I'd say.

**Stone, Kelly**

That sounds like a good number. There was a substantial amount of surveying that took place to create those maps. It was no small task so granted there was some distance that were interpolated because you can't cover every square foot of course, but those kinds of maps, since they are at 10 feet of elevation contours then anything in between is essentially a guess between those and how the land is ready to fall.

**Tobin, James (Kelly)**

Qualifications. This cemetery is 660 feet from this site, 1/8 of a mile. What are the legal, how far does it have to be, 1800?

**Khosravi, Reza**

1,875.

**Tobin, James (Kelly)**

We're hearing it's an eighth of a mile.

**Khosravi, Reza**

\_\_\_\_\_ to residences, churches, schools, businesses, unincorporated areas. For public use areas it's 1875.

**Tobin, James (Kelly)**

And an eighth of a mile is 660 feet.

**Khosravi, Reza**

Our field office measured it as 3,046 feet between the cemetery and the facility.

This is a field office report that the required distance is 1,875. What they have is 3.046. This report that comes from Field Office 1 in Manchester happens to agree with this Geological Survey that says the distance between the facility and the cemetery is 3,046.

?

Around the road?

**Khosravi, Reza**

Yes. No, it's not around the road.

**Murphy, Kathryn, Chair**

No, it would be from point to point I'd think.

?

It would be as the crow flies, the 3,048.

**Khosravi, Reza**

Usually we trust all the time what our field office report says.

**Murphy, Kathryn, Chair**

Wayne, do you have a clarification point.

**Gieselman, Wayne**

Several points have come up that I feel like I need to at least say something about. First the separation distances that you have been referring to have all been verified by our field offices and they go as the crow flies, they don't go around the roads. That is why we have them do site surveys. They don't have any axes to grind I guess as to whether these distances are right or wrong. That's what they go check is how far are we from the cemetery, how far are we from the road, how far are we from the nearest residence, and there are a whole variety of off-set distances

that are in the law. I know that somebody behind me disagrees with what they are, but never the less we are bound by what the law tells us the separation distances ought to be.

Floodplain issues are another whole thing. My recollection given that my brother lives about four miles from here is that the 99 flood was a nine inch rain in an overnight basic period of time. That is something that is frankly way beyond a 100 year flood. Secondly we are limited again by statute. The statute says that we can only look at major water sources. The closest major water source is the Little Wapsi and that's three miles away from here. If we take out the Little Wapsi as Kelly has tried to explain to you, we are still bound by what our own jurisdictional limits are which is a 10 square mile drainage area out in rural areas. This is roughly four to five square miles, so while we all may be concerned about flooding here we don't have any legal authority to look at those things in this particular instance. I believe what elevations I have heard here, and bear with me, but many long years ago I was a floodplain engineer, having the lowest water entry level into these buildings stationed about three feet above the bridge deck that's up above these things makes we believe we have a backer of safety here before we are going to be flooding into these pits and potentially causing surface water contamination. The water quality concerns in terms of the surface wells, the sand-point wells is what I'm referring to here, sand is a pretty good filtering mechanism. I'm certainly not going to say that you can't get nutrients into a sand-point well because you certainly can. But those nutrients can also come as we've discussed on a hundred occasions from commercial fertilizer, from anhydrous ammonia, from all kinds of things that are not regulated under state law.

One of the things that came up was the hog disposal from the large scale die-off that happened about a year ago and some implication that DNR had turned that over to the sanitarian. I'm sure that we did work with the sanitarian there but I pretty clearly remember that day and the farmer involved in that made contact with the Manchester field office. Yes, in fact, there are regulations that say you can only bury 44 per acre, I believe it is, but in this case because we think, I don't remember for sure if this was a very hot time, but the issue here was how do we dispose of large quantities of dead livestock in a fairly short period of time and we did in fact waive our 44-pig-per-acre limit in this so that we could get rid of that livestock in a pretty short period. I didn't check all those records but I pretty clearly remember that because we had to make some pretty fast determinations that day, how we were going to deal with this issue.

Again, set-back distances are in the law. The field offices have checked those things. I guess those are the points that I felt like I needed to make here in terms of some of the things I've heard. Again this is back in your court, but I feel I have to point out to you what kind of statutory requirements you are looking at, what kind of responsibilities you have.

**Murphy, Kathryn, Chair**

Thank you, Wayne. Any other questions.

**Peckumn, Jerry**

Can I look at the slide on the manure management plan?

**Murphy, Kathryn, Chair**

Sure.

**Peckumn, Jerry**

Earlier, Doug, someone mentioned that you would take out the HEL land out of this manure management plan.

**Pagel, Doug**

Right, yeah.

**Peckumn, Jerry**

There were questions earlier about whether your accounting in the manure management plan filter strips.

**Pagel, Doug**

I have filter strips and bumper strips on that farm.

**Peckumn, Jerry**

I think the question from the other side was that you were saying that you were counting land to dispose manure on.

**Pagel, Doug**

Counting tillable acres.

**Peckumn, Jerry**

That's 1,048 with everything. When you say tillable acres, does that include filter strips? I guess they would be considered tillable.

**Pagel, Doug**

Yes, they're tillable.

. . . There should be plenty of an overrun of acres of land to more than offset the filter strips and bumper strips. We are looking right at 20 acres of bumper strips and filter strips.

**Davis Cook, Lisa**

Could you put up the floodplain map again?

Kelly, my question is for you, while it's coming up. I know you talked about regulations as far as the floodplain of a major water source and the requirements of how big the drainage area is. Given those two requirements, what if when you did the mapping or whatever it showed that this facility or whatever was in the floodplain? Even if it did show that it was in the floodplain, does the law allow because it's not a major water source and because it's not a 10 square mile drainage district that it could be denied based on that? I'm not articulating this very well, but do you understand where I am going.

**Stone, Kelly**

Yes. I'm glad you're asking because I tried to make that point and I could tell that I didn't articulate well in the first place.

The bottom line with this location, because the drainage area along in here is in the four to five mile range it is unregulated with respect to floodplain.

**Davis Cook, Lisa**

So even if that floodplain showed that even if it went right over the top of those proposed sites the law doesn't allow it to be denied because of the non-major water source and the less than ten square miles.

**Stone, Kelly**

Right. The law does not in any way, shape, or form allow it to be denied because of its location nor does it even require a permit from the floodplain management program for that site because it falls below that threshold as well.

**Davis Cook, Lisa**

But wouldn't you, here's an opinion question for you. But wouldn't you think that if there was going to be floodwater over a manure pit that that would cause detriment to the waterways of the State of Iowa; if it was in a floodplain to where it was going to flow to a waterbody? Wouldn't that impact the waters of the State of Iowa if the flood went over those pits and that water ended up in a water source regardless of how big the water source was?

**Murphy, Michael**

The feedlot rules require that the top of the manure storage structure be shall be constructed at least one foot of the elevation of a 100 year flood so our feedlot regulations cover that.

**Davis Cook, Lisa**

So regardless of if it's a major water source or a less than ten square miles it would have to be a foot above whatever the floodplain is.

**Murphy, Michael**

Yeah, I'm. Yes.

**Davis Cook, Lisa**

And what's the elevation of the pits?

**Khosravi, Reza**

The lowest point is 1,055. Pump-out station would be 1,061. That is three feet higher than above

**Davis Cook, Lisa**

Right, but the level of the pit is 1,055.

?

Right.

?



The top?

?

No, the bottom.

**Anderson, Nick**

The top of the pit is 1,061 and the 100 year flood level is what, 1,051?

**Stone, Kelly**

That's the \$64 question of the 100 year flood elevation is what and the most direct answer is we don't know for sure at that site without a tremendous amount of study. But again, an estimate on the high site would put it at 1,055.

**Davis Cook, Lisa**

Okay. And I heard several different answers. What is the level at the top of the pit?

**Khosravi, Reza**

1,061.

**Stone, Kelly**

The, correct me if I'm wrong, the rule Mike referred to is the top of the embankment for manure storage must be one foot above the 100 year flood plain elevation. That is also consistent with building construction. If a house for example or business is to be constructed within the 100 year flood plain it can be if it receives a permit to do so and verifies that it's lowest \_\_\_\_\_ floor is one foot above that 100 year elevation. So there is some carry over from \_\_\_\_\_ the regulations into that part of the feeding operation. As far as the observational information, again I don't want to discredit that at all, because what people observe is very valuable information, but in this situation it can't be used for regulatory authority. I would use that information like you're looking at is as circumstances all fell together and Wayne clarified that very clearly that the 99 flood was very likely off the top of the scale as its percentage chance and it was much more than a 100 year flood. Since that the amount of water coming through this area was you know off the charts as far as what would be seen in those times. So that information is something that should be used in the design of a location built in the backyard safety and protect yourself from future events as unlikely as they might be.

**Davis Cook, Lisa**

Your estimation is that the floodplain level is 1,055?

**Stone, Kelly**

Yes.

**Murphy, Kathryn, Chair**

And that's where the red hash mark lines would be.

**Stone, Kelly**

This red hash mark is the area from the approximate map. That as folks will find out is an old map. Those were developed in the 70's. That elevation is derived more based on someone looking at the contours to see how the water flows through this area. It's not based on a tremendous amount of equation. So this line would put the floodplain at 1050 or 1051 in this location. As I double check we did the deeper calculations and came up with a higher number at 1055.

**Tobin, James (Kelly)**

Kelly, do you think those rules are right in your own opinion?

**Stone, Kelly**

Which rules?

**Tobin, James (Kelly)**

Well, you went over those a while ago with Lisa and all this water goes into the major waterways, right?

**Stone, Kelly**

Right. Eventually.

**Tobin, James (Kelly)**

Why isn't the rule taken on a smaller stream also.

**Stone, Kelly**

The statute was written for the prohibition to be to keep feeding operations out of the 100 year floodplain of major water sources.

**Tobin, James (Kelly)**

It looks like this stream is coming down here. If you get a lot of water up here, that water that comes down there where it hits this other one is really going to spread out. Right?

**Stone, Kelly**

Hydraulically probably although there is some reasonable grade to the south there. Notice that the floodplain area to the north is much flatter.

**Tobin, James (Kelly)**

It just looks like if they make rules for major waterways they could apply to minor waterways too. And, you have local people saying it. In other words, local control. They know as much as anybody about it. I just, it's hard for me to realize what could happen is a problem.

**Stone, Kelly**

The decision for the prohibition to be limited to only major water sources, of course, was not mine.

We have, as you recall from December, a set of rules that do clarify that feeding operations will be regulated to the extent possible essentially as buildings to that to that threshold of the ten square miles. That threshold has been around even since Wayne's.

**Peckumn, Jerry**

I have a question for Nick Anderson. May I ask?

**Murphy, Kathryn, Chair**

Yes.

**Peckumn, Jerry**

Nick, it looks like if you move the buildings an 1/8 of a mile south that they would be on a lot higher ground. Is it too steep?

**Anderson, Nick**

Well, yeah. Not real high. That's pretty flat in there. Well

**Peckumn, Jerry**

This would be up ten feet.

?

South is closer to town.

**Anderson, Nick**

The reason we, the reason those buildings are located that way is just south of that 1070, you can see there is a house there and we need to stay 1250 feet from that house, Paul and Gracey Griffiths, I talked about that. So we pushed the buildings north to get that separation. If we still wanted that separation we would have had to go clear west, way back in the field.

**Peckumn, Jerry**

The people who own that house are the people who were willing to provide land for manure?

**Anderson, Nick**

No. They own land to the east and to the south of us. You see that line 115, kind of a straight line. That's their north property line. They live south of that.

**Peckumn, Jerry**

Do they live in the house?

**Anderson, Nick**

Yes.

**Peckumn, Jerry**

Why did you decide not to put the buildings on the other side of the farm next to the road?

**Anderson, Nick**

There's a high line runs there. There's a big high power high lines with big towers and the buildings would be underneath those and we thought that wouldn't be appropriate. We didn't check the regs but we just didn't think that would be appropriate putting them there. Scared one of those lines would drop and then if you go north there's really not suitable land north of Doug's house. So it was the logical site and then we're just 1/2 mile from the road going south for service and so it just worked out good.

?

You won't be able to haul manure north across that bridge will you?

**Anderson, Nick**

No.

?

Go through the field?

**Anderson, Nick**

Come around the other way, yeah. Or we can come south depending on which farms it's going to.

**Murphy, Kathryn, Chair**

Any further questions? Everyone finished with questions?

**Venner, Rita**

<i>Rita Venner made a motion and to retain the permit as is given to Fremont Ridge by the DNR. Gary Priebe, seconded the motion.</i>
--

**Murphy, Kathryn, Chair**

Rita, I believe you wanted to speak to that.

**Venner, Rita**

I want to remind the people that did the presenting and also the committee that when we look at these we do consider everything that the DNR took into account and I could see nothing wrong in the permit that they gave. It looks to me like they looked into all the water qualities, the air qualities, and the exact thing that they were supposed to do as far as regulations are concerned and so in lieu of that I see no reason not to allow the permit to go again.

**Murphy, Kathryn, Chair**

Any other questions? Comments?

**Townsend, Terrance**

I know I guess even though it sounds like a legal definitions, I'm still concerned with the potential for the flood water and the potential for the sandy soil issues but I guess I'm not sure what to do with that.

**Peckumn, Jerry**

I'm a little concerned about whether the manure management plan is really economically feasible because it includes land a long way away from the building site.

**Townsend, Terrance**

Do you have sites for that D&E that was up, Madam Chairman.

**Murphy, Kathryn, Chair**

Yes.

**Priebe, Gary C.**

I don't think we need to worry about whether the manure management plan is economically feasible or not. It's his operation, he's the one who has to pay for the cost of hauling and we've seen several operations that are now going to be hauling manure 10 to 15 miles with tankers. If that works for his plan then where he puts the manure I don't think should have any bearing on whether he gets a permit or not. One thing that the county writes that the manure management plan, that the acres don't add up. I had a little question about that but Reza said it's 468 acres he has to have and he has 1,058 acres. Well he sure doesn't have 500 acres of buildings and strips, check strips. I also question about the location of the site, which was explained by Nick Anderson to me that that was the best site that they could choose on the whole farm. As far as the floodplain issue, they are six feet higher than the 100 year flood so I just, so the floodplain issue to me is not an issue. If your building is six feet higher than the 100 year flood you should never have a problem.

**Townsend, Terrance**

It's the should that bothers me though Gary.

**Priebe, Gary C.**

Yeah.

**Townsend, Terrance**

I like to be more than should but I realize you can't and

**Priebe, Gary C.**

You just can't regulate every possibility out of it. You know it's possible this roof is going to fall in on us in 15 minutes and it will take care of all our problems. To me you have to do the best you can do with what you've got and if they're six foot over the 100 year flood that to me; code is one foot which I didn't realize. I would think code should be more than one foot.

**Townsend, Terrance**

Yeah.

**Priebe, Gary C.**

But six foot should be ample.

**Townsend, Terrance**

If I were building a house I would want to be more than one foot above it.

**Priebe, Gary C.**

I would want mine more than one foot above too. So to me they have met all the regulations, they've met all the code and separation distances are more than adequate. I just think that they should get the permit.

**Peckumn, Jerry**

Well, Gary, part of the reason that this building is being built where it is because of separation distances. If they move the building where it looks like it might be a better spot from a flood standpoint, then they would be too close to a home. So they are just at a bare minimum.

**Murphy, Kathryn, Chair**

And they would also be closer to the community of Westgate. Isn't that true?

**Davis Cook, Lisa**

This is one of those times when I feel very conflicted between what the law says regarding the floodplain and the overall charge that the DNR and the commission has in protecting the environment of the State of Iowa and protecting the waterways of the State of Iowa. And, Kelly, you yourself said the 1,055 feet is an estimation and I am a little bothered by the fact that we say that we can't take observations of people who live there and see it as fact. I mean if my dad told me what happened on our farm, I would take it as fact. I wouldn't think that he was making it up for any reason. If he told me that it flooded that much, well then it flooded that much. And I just, it bothers me when I feel like the law does not allow us to go far enough to protect the environment of the State of Iowa. Kelly, what's your response?

**Stone, Kelly**

Is it appropriate. Just to clarify, I want to make sure that everyone knew that I didn't says that we couldn't use the observational information as fact because it is fact. Again, I echo your sentiments of trying to be clear within our limits and it seems we walk a very fine line at times; that our regulatory authority would only extend again to the prohibition of the major water source and for the 100 year floodplain only to the drainage area of 10 square miles. And to better determine a 100 year floodplain elevation at that location other than using the estimate that we did appears to be fairly conservative on the high side would take a tremendous amount of study and very expensive which is why the entire state is not mapped which is because that is not easy and it's not cheap by any means. What I would do since I'm an engineer I'll pass out an opinion, what I would do with the observational information is use that to build in safeties, safeties of fact. And from that within the limits of separation distance and so on is get the buildings onto as high a ground as possible and put those openings for the pump outfits as high as possible. If there are no further possibilities at this site, then so be it. And again from my purview of the floodplain regulations it meets those regulations. In fact, it falls below the threshold.

**Murphy, Kathryn, Chair**

I just have a quick clarification here. With the permit that we are looking, if we were to say yes for final approval, those safety issues then, if I am correct from my notes, those are a condition of the permit. Is that correct?

**Khosravi, Reza**

Yes, they would be a stipulation of the permit.

**Murphy, Kathryn, Chair**

Thank you. Any others. Are you ready for the vote?

*We have a motion before us commissioners to give final approval to Fremont Ridge in Fayette County. Roll call vote: Gary Priebe aye, Kelly Tobin nay, Terry Townsend aye, Rita Venner aye, Jerry Peckum nay, Lisa Davis Cook nay Kathryn Murphy aye. Motion does not pass.*

**Murphy, Kathryn, Chair**

Okay, we have a 4-3 vote. That motion does not pass so we do need to ask Mike to explain where we're at with this, what this means, if you would Mike would you come forward and do that?

**Murphy, Mike**

Well that boils us down to a negative decision. You need to make a decision, if you want to deny this permit you need to make a motion to deny it and need to pass that and you need to state your reasons based on the law as to why you feel it should be denied so we're not done.

**Priebe, Gary C.**

Run that by me again will you please, Mike?

**Murphy, Mike**

What we have is a proposal by the staff to issue a permit. By failing to pass a motion to issue the permit, you are not saying the permit is denied. The commission as a whole needs to make a motion to deny the permit or to issue it with other restrictions. I think you did that last month in the Humboldt case, issued a conditional permit. But you need to have reasons for your decision, you need to state those in the record and they have to be based on the law, and you need to pass it with five votes.

**Davis Cook, Lisa**

Mike, I have a procedural question for you. What if we can't pass a motion with five votes today?

**Murphy, Mike**

I don't know when the 35<sup>th</sup> day is but you can try again later or I think it's a good argument what the status is. I think we proposed to, the staff is proposed to issue the permit if you can't overcome that, I think there is a legal argument that they get their permit. I don't know if that's a good legal argument or not, I'm sure the applicant would make it.

**Anderson, Nick**

That would certainly would be our position.

**Davis Cook, Lisa**

When is the 35<sup>th</sup> day Wayne?

**Gieselman, Wayne**

I don't know for sure. Reza, do you know when the 35<sup>th</sup> day is.

**Khosravi, Reza**

On January 2, we received the Fayette County so February 1 would be one month and February 4 or 5 would be the last day. 35 days.

**Anderson, Nick**

I'm not an engineer; I'm just a farmer and a guy who want to build a hog confinement. If I understand this right, Westgate is here and this water all gets trapped here and runs over this road. That's a concern everybody has, is water runs over this road and gets on this bridge. Now what I have said is I will get this three foot higher than this road. That's 11 foot higher I think than the 100 year floodplain; it's six foot higher than their outside calculations. It also says to me that if this height is 1,061 feet, this bridge is 1,051 feet, we have to have 10 feet of water on this bridge before we have water in my hogs and I don't want water in my hogs. What is the likelihood that the water will run over on this bridge when water has never been over this bridge? I'm not an engineer, I'm just taking things, and I think everybody is saying things that they believe is true and they are true, it's all from a perspective; but because water goes over road here, doesn't mean it's the same level. That road is a dam and it drops down and stays pretty much within there. I don't know if that gives you any comfort or not.

**Murphy, Kathryn, Chair**

Okay, commissioners, back to you.

**Peckumn, Jerry**

I'm trying to think of something to add to the permit that would make me feel at ease on this. One thing, the manure management plan concerns me. One thing that you could do that I would feel more at ease about is to stipulate that if manure is applied to the highly erodable land that all the NRCS conservation plan is met/followed. Is there a conservation plan?

**Pagel, Doug**

There is on the bumper strips and filter strips as far as tillage, there's not.

**Murphy, Kathryn, Chair**

I think that's a given though that they have to follow.

**Khosravi, Reza**

If it's highly erodable land they have to give it and they have given it for that

?

So how much is highly erodable and how much is not.

**Khosravi, Reza**

For that field A, I do remember it is about 2 – 5% low and it is about 148 acres.



?

And the rest is non highly erodable?

?

Yes.

?

Just clarification of what was stated on the acres in the manure management plan. He stated that there was 400 and some. That's on an every other year basis, 450. This year 450, next year 450, so he needs roughly 1,000 acres for the manure management plan. It's on an every other year basis, right?

**Khosravi, Reza**

They put it on corn, they don't put it on soy beans.

?

So you have to have twice the acres of what the one commissioner stated.

?

But he still has plenty?

?

Yeah.

**Murphy, Kathryn, Chair**

So the status of the vote currently is four commissioners to approve the permit and three that are against issuance of the permit so I guess we need something, an initiative from the three of you that are against, that voted nay so we have our direction. I'm not limiting it to the three of you of course, but

**Peckumn, Jerry**

It's difficult to think of something that would make us, make me feel more comfortable about the flooding except that we don't really have the authority to regulate that, I guess.

**Townsend, Terrance**

And like Gary pointed out and we heard they are going a minimum of six foot above the code.

**Priebe, Gary C.**

Six times more protection than what code even states.

**Tobin, James (Kelly)**

I guess I'm not sure that the DNR is sure on a lot of these floodplains. They've had trouble other places and I guess there needs to be a lot more study on that and I just feel like you build that close to the town and to the creek even though it's not a major waterway, the water still goes into the major waterway; we still could have damage that way, but with them being close to the

cemetery and town is I just don't think its. We're here to take care of the environment and we're just not taking care of it when we allow something like this so close.

**Venner, Rita**

On the other hand, Kelly, we do need to take the data that we have. That's what we have to work

**Gieselman, Wayne**

I don't know that I have anything I can add to your discussions. This is entirely up to you, you're the commissioners; but I guess from the prospective of the staff and trying to move forward, where do we go from here, we have proposed to issue a construction permit on the basis that we believe it meets the standards and the requirements of the law and I've talked a bit with Mike and I think our stance on this is going to be if there is not an overriding of a permit, the permit will probably stand. That is the way the staff would purpose to go at this. If you come up with reasons, I'm not telling you that you can't override what I'm telling you here, but you are going to have to have some reasons and enough votes to do that, I guess.

**Christiansen, Liz**

But if there isn't a positive vote that meets with five votes, then the permit stands as it is written right now as a draft. Right?

**Gieselman, Wayne**

That's where I would say we have to be.

*Jerry Peckumn moved that we approve the permit with this added stipulation that manure to be applied to any land that is highly erodable will have to be applied within the conservation management plan as worked out with the NRCS. Terrance Townsend, I ll second.*

**Murphy, Kathryn, Chair**

Okay.

We're going to discuss that. We have a motion and a second to approve the permit with the addition of the stipulation, Jerry I started writing and I didn't finish; the manure applied to highly erodable land

**Peckumn, Jerry**

whether or not it is in the current manure management plan. I think my motion would cover any manure applied to any highly erodable land. That the application would have to comply with the conservation plan as agreed to by the NRCS.

**Murphy, Kathryn, Chair**

And we have a second. Is that correct, we have a second, Mr. Townsend?

Yes.

**Murphy, Kathryn, Chair**

Okay. Let's have discussion. Obviously the question then goes to, or has that already been taken out. Reza is that what you are telling us, it's already been eliminated?

**Khosravi, Reza**

Yes, that field will be eliminated.

**Murphy, Kathryn, Chair**

Okay.

?

For this year or all of the time.

**Khosravi, Reza**

They have to give update every year according to SF2293 and then if you make it that he can't use it for updates the probably we should put in

**Davis Cook, Lisa**

Then Jerry what you are saying is that for the length of this facility you don't want it on if it's on highly erodable land it has to comply with NRCS.

**Gieselman, Wayne**

Could I clarify, if I could? The proposal in front of you identifies all 13 fields as being eligible for the manure management plan. Mr. Anderson and Mr. Khosravi have had conversations about taking that out and apparently Mr. Anderson has agreed to that, but in terms of approval, you are actually looking at and we presented to you as a staff, all those fields are in there. If we issue a permit it would have to be a condition on it that field #13 or whatever it was is not included in that manure management plan so I'm probably not making sense to you but what we are actually, what's been proposed to us includes all these fields. If that field is removed, it will have to be a condition of the permit that says you can't apply manure there and that's a little beyond what your motion is calling for Jerry.

**Priebe, Gary C.**

Question. You can't do anything to a highly erodable field without the permission of the NRCS, correct? You have to be in compliance with your conservation plan. So if you apply manure to any highly erodable field it has to meet with your conservation plan before you can do it anyway. Correct?

Yes.

**Priebe, Gary C.**

So this motion is actually mute even if the field is in.

**Gieselman, Wayne**

Probably the difference here is that NRCS compliance plans are confidential under the federal statute that deals with those. If it becomes a part of our permit we would become Mr. Anderson

or whoever the owner of the property is would have to divulge that so that we also know that it's within compliance. So it is a step beyond in the terms of openness and public records.

**Priebe, Gary C.**

And not all, I think it's field 13 if that's the one, not all of that field is highly erodable.

**Gieselman, Wayne**

I don't know the answer to that Gary. I know there was one field.

**Priebe, Gary C.**

Somebody said that part of that field was not highly erodable.

**Gieselman, Wayne**

I think fields are either HEL or they are not HEL. I think it takes 30% or something

**Khosravi, Reza**

33.

**Gieselman, Wayne**

If 33% of the land in a field is HEL, then the whole field is.

**Priebe, Gary C.**

I'd forgotten what it is.

**Murphy, Kathryn, Chair**

Further discussion. Then let's call for the vote. And the motion again is to approve the permit with the added condition, Any manure applied to any highly erodable land will have to be applied within the guidelines of Conservation Management Plan as agreed to by the NRCS. Is that correct?

**Peckumn, Jerry**

That's correct.

**Murphy, Kathryn, Chair**

Okay. All those in favor please signify by saying aye.

Aye.

Those opposed.

Nay.

*Roll call vote please.*

*Kelly Tobin, nay; Terry Townsend, aye; Rita Venner, aye; Jerry Peckumn, aye; Lisa Davis Cook, nay; Gary Priebe, aye; Kathryn Murphy, aye. Motion Passes*

<b>APPROVED AS AMENDED</b>
----------------------------

**Murphy, Kathryn, Chair**

A little discussion on feedback as to the procedure we used today for the hearing.

**Priebe, Gary C.**

Personally, I think it went well. I think we had enough time for each of the constituents to state their case and the chair also allowed a little influx from people that we hadn't figured on but I still, I know Lisa and I don't agree on much but I still agree with Lisa that we still need public

**Davis Cook, Lisa**

I still like you Gary.

**Priebe, Gary C.**

but we still need public input. We can't stand two and three and four hours of public input but what we had today was just enough for me to get all my questions answered.

**Murphy, Kathryn, Chair**

I think it was stated in our packet we had a lot of - chaos – extremely important on a local level also.

**Priebe, Gary C.**

Right.

**Venner, Rita**

I thought it went well, too. And I thought the county did well.

**Murphy, Kathryn, Chair**

Ladies & Gentlemen: We are trying to finish!! Thank you for coming. We appreciate your organization. That's what we are trying to discuss today. Rita, you were trying to make a comment.

**Venner, Rita**

I'm speechless. I think it went well. I thought the county handled it well. Really I'm surprised how the time frames came out. I mean the client didn't even take as much time as he needed. I was impressed.

**Murphy, Kathryn, Chair**

Did you feel it flowed well.

**Peckumn, Jerry**

The only thing I would say is I'd hate to have a hard and fast rule to only allow a half hour for

**Priebe, Gary C.**

The have to be organized or they can't get it done in a half hour.

**Murphy, Kathryn, Chair**

Well, they were organized.

**Priebe, Gary C.**

Remember, we stopped at 11:30 and we had an hour where the whole room had input so they actually all got more than ½ hour.

**Davis Cook, Lisa**

And that's fair.

**Priebe, Gary C.**

To absolutely say no public comment still bothers me. The way it worked this morning I thought it worked well.

**Murphy, Kathryn, Chair**

And the other thing is that we had originally had we would be done now and we would be due to do one more.

**Priebe, Gary C.**

Right.

**Murphy, Kathryn, Chair**

I mean originally we had another one we had to discuss, which that's a mute point, but.

**Davis Cook, Lisa**

I actually thought today went really well too. Here's a suggestion. What if we gave the department a half hour to make their presentation and gave both the county and the applicant a half hour to do their presentation and then 15 minutes to bring in members of the public for their respective sides to speak on their behalf. That way there would still be some public participation. It would be the same for both sides. Kind of like we talked about before going pro, con, pro, con. But that way they would have time for their presentation as well as time to bring in some public comment.

**Priebe, Gary C.**

So you would say the county would bring in 15 minutes of whatever they wanted and the applicant could bring in 15 minutes of whatever they want so in essence we're doing what we did today with just giving them time to do their presentation and then bring

**Murphy, Kathryn, Chair**

You would add another half hour.

**Priebe, Gary C.**

45 minutes. I don't have any problem with that.

**Murphy, Kathryn, Chair**

Would you be willing to write up some procedural because we have to think of number of people, number of minutes per person. You know if you get a couple bus loads or a bus load of people.

**Davis Cook, Lisa**

I would think we would do it the same. My proposal would be that we do it the same way we did it today where the county chooses who speaks and the applicant chooses who speaks so if they have public hearing, they can say at the public hearing we have 15 minutes for comment at this hearing before the EPC, we are going to select some people.

**Murphy, Kathryn, Chair**

They sort of did that today.

**Davis Cook, Lisa**

They did. I'm just wondering if it wouldn't be adding it into the structure so it shows that there is public participation and there may be times when the county make it more legal argument, or may want their county attorney to be part of it and I know with Humboldt County, their county attorney ended up with little bit of time at the end for probably what was the most important part of their argument. And this way it allows them to have their engineer, their supervisor, their attorney, whoever they want to make that half hour presentation and then add the public participation on at the end.

**Tobin, James (Kelly)**

I think if we add the chairperson can also have a little flexibility there. I think that's what makes this thing work. Kathryn, you've done a good job on that.

**Tobin, James (Kelly)**

But I think if we add that to yours, it will work.

**Murphy, Kathryn, Chair**

Okay.

?

Yeah, 45 minutes for each side.

A half hour is still enough time for the department?

**Gieselman, Wayne**

It would be plenty for us in most cases. It's probably more than enough.

**Gieselman, Wayne**

The applicant used five minutes.

?

Just as a point of clarification, he actually took less time, he was the attorney of record for Humboldt and even with all of the additional time that we added, he still ended up with like 40 minutes that he could have used that he did not use.

?

That's why you have to be flexible, some will use a half hour and some will use an hour and one-half.

**Priebe, Gary C.**

I agree with Kelly. The way we did it today worked perfect; they knew, if you keep stretching it out, they are just going to keep adding to it. If they have a half an hour, a half hour, and a half hour, and then the chair has the ability to pick up some comments here and their. I thought it went real well. Because the longer we stretch it out the longer these meetings are going to take.

**Priebe, Gary C.**

And we had an hours discussion after comments.

One thing I would like to see and I think we did a fairly good job on this one is address Kelly's concern and it's kind of my concern too about floodplains. If we don't have an established 100 year floodplain map research that a little better so we are sure, and I think we did that one on this one, don't you?

?

I think we had good historical data, the best we could have.

**Priebe, Gary C.**

Just make sure that we have all of the data that is available.

**Murphy, Kathryn, Chair**

And the local knowledge is important as far as input.

And I think it is good for them to see the other side because that might make them understand where the DNR is coming from. They don't hear that presentation from the DNR when they are out there in the county.

**Murphy, Kathryn, Chair**

I like the DNR presentation first.

Do we need a motion on how to handle

**Murphy, Kathryn, Chair**

If you wish and you want. I think that would be good.

**Venner, Rita**

Lisa are you going to put this in writing for us.



**Davis Cook, Lisa**

I can.

**Venner, Rita**

I think it would be nice to have that criteria in our notes.

**Davis Cook, Lisa**

I could come up with a motion.

**Murphy, Kathryn, Chair**

The department is going to need to know this too because they have to be able to give the information.

?

And that information should go out to the counties whenever there is going to be a hearing.

**Gieselman, Wayne**

I think all of you, I know Kathryn did, I think all of you got a copy of the letter we sent out to explain what our procedure was this time. So we've done it once now. I'm not convinced that we are totally, I know everybody was happy today, but the next one might be different. We are not under any big constraint to get that totally codified so that hearing procedure is out there. I guess I'd like to run through this another time or two because you know you get a different, this was a group of local people.

**Murphy, Kathryn, Chair**

That's correct.

**Gieselman, Wayne**

I would rather we went through this another time or two and make sure we are pretty comfortable with this rather than stick something in our rules and then you're bound by it and you'd have to go through a six months process to change it.

**Murphy, Kathryn, Chair**

We can change it. We can try this and see if we like it; otherwise we can change it.

But Lisa could go ahead and make her notes here.

**Davis Cook, Lisa**

But what I had said was 45 minutes for the county and 45 minutes for the applicant with 30 minutes for presentation and 15 minutes for public participation.

**Murphy, Kathryn, Chair**

If we do that I think we should say a maximum of but I think we need to say 30 minutes for the presentation and then a maximum of 15 for the participation just because

If it's like they did today, they made the public part of their presentation.

**Murphy, Kathryn, Chair**

That's correct, that's right.

How do you divide that up. If they only need 10 minutes for their presentation, do we just give

**Murphy, Kathryn, Chair**

I guess what we need to decide is do we want to try it again or do we want to try it one more time. Do you think we should take any vote on how we handle this.

**Priebe, Gary C.**

I move that we try the next one exactly the same as we did this one and see how it goes, try the next two, I'll amend my own motion, the way we did this one, and then if we need to we can change.

I don't have the letter in front of me now, but did we make it clear to the county that they could put public participation as part of their presentation.

**Priebe, Gary C.**

I hope that it was clear that way.

**Murphy, Kathryn, Chair**

Here, it's right here.

It says you can allocate the time among as many representatives as you desire.

**Priebe, Gary C.**

That's what we said.

Can we give it a little bit more time, Gary.

**Priebe, Gary C.**

I think if we just keep adding time, and adding time, and adding time we're going to be back to where we were before, you know, with the if the chairman sees that it's inadequate time for a particular case

**Murphy, Kathryn, Chair**

I could call for an amendment to what's the parliamentary procedure on that Mike? You can always give waivers or change.

**Tobin, James (Kelly)**

I'll second.

**Murphy, Kathryn, Chair**

*There s been a motion and a second to try what we ve done as far as the procedure this time. Two more time and then a review which would put us into August. Motion carried unanimously.*

**Priebe, Gary C.**

Moved to adjourn. (12:45 p.m.)

**Davis Cook, Lisa**

Seconded.

## **ADJOURNMENT**

With no further business to come before the Environmental Protection Commission, Chairperson Murphy adjourned the meeting at 12:45 p.m., Wednesday, January 22, 2003.

-----  
Jeffrey R. Vonk, Director

-----  
Kathryn Murphy, Chair

-----  
Rita Venner, Secretary

**INDEX****A**

Adjournment, 49  
Adoption of Agenda, 1  
**Anderson, Nick**  
    **Demand for Hearing**  
        **Fremont Ridge, 13**

**B**

**Bunn, John**  
    **Demand for Hearing**  
        **Fayette County, 6**

**C**

Call to Order, 1  
Commissioners Absent, 1  
Commissioners Present, 1

**D**

Demand for Hearing  
    Fayette County  
        Fremont Ridge, L.C., 2  
Director's REMARKS, 1

**F**

Fayette County  
    Demand for Hearing  
        Fremont Ridge, L.C., 2

**H**

**Herd, Chuck**  
    **Demand for Hearing**  
        **Fayette County, 11**  
**Hurd, Chuck**  
    **Demand for Hearing**  
        **Fayette County, 9**

**L**

**Lay, Don**  
    **Demand for Hearing**  
        **Fayette County, 11**

**M**

**McAfee, Eldon**  
    **Demand for Hearing**  
        **Fremont Ridge, 13**

**P**

**Pagel, Doug**  
    **Demand for Hearing**  
        **Fremont Ridge, 22**  
**Pashawn, Don**  
    **Demand for Hearing**  
        **Fayette County, 12**

**T**

**Tillen, Jeanine**  
    **Demand for Hearing**  
        **Fayette County, 10**

**W**

**Wolff, David**  
    **Demand for Hearing**  
        **Fayette County, 12**